



**STATE OF NEW JERSEY**  
**Board of Public Utilities**

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Newark, NJ 07102  
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TELECOMMUNICATIONS

ORDER

IN THE MATTER OF THE FILING OF BELL ATLANTIC- )  
NEW JERSEY, INC. FOR THE RECLASSIFICATION OF )  
EXISTING RATE REGULATED SERVICES – )  
DIRECTORY ASSISTANCE SERVICES AS )  
COMPETITIVE SERVICES )

DOCKET NO. TT97120889

(SERVICE LIST ATTACHED)

BY THE BOARD:

Background

On December 12, 1997, Verizon New Jersey (VNJ) filed a verified petition with the Board seeking approval for the reclassification of its Directory Assistance Services (DAS) from regulated to competitive services. According to VNJ's petition, its DAS enable VNJ's residential and business customers to obtain assistance in determining the telephone numbers and listings of customers, and include features such as reverse search and automatic dialing of requested telephone numbers. Contemporaneously with its filing, VNJ notified the public of this request through publication in newspapers throughout the State, and by providing copies of this filing by certified mail to all facilities-based interexchange carriers operating within the State, as well as to the Ratepayer Advocate (Advocate). The Advocate, AT&T Communications of NJ, L.P. (AT&T) and Board Staff requested VNJ to provide certain data, and the Advocate and AT&T submitted comments with regard to VNJ's petition.

By Order dated September 14, 1999 (1999 Order), the Board approved the reclassification of VNJ's DAS from rate regulated to competitive, effective October 1, 1999. That approval was contingent upon VNJ's agreement not to increase the chargeable call rate of \$.20 for residential local directory assistance service and to limit the residential call allowance to not less than four calls per month per line for the term of VNJ's Plan for Alternative Regulation-2 (PAR-2), including extensions thereof. The Advocate appealed that decision, contending that the Board's conduct of the proceeding violated the requirements of N.J.S.A. 48:2-21.19(b).

On July 13, 2001, the Superior Court of New Jersey, Appellate Division, issued a decision in which it remanded the reclassification of DAS to the Board because the Board had not conducted hearings prior to its approval of the VNJ petition for reclassification. The Court declared that, because the Legislature had expressly provided for a hearing prior to service reclassification, it was not necessary to determine whether or not a hearing is required, but, rather, to determine the nature of that hearing. The Court found that the Advocate and other interested parties “were entitled to appropriate opportunity for addressing the sufficiency and accuracy of the data ... [and] ...[a]t the very least, ... were entitled, through cross-examination or some effective substitute, to an opportunity to test the accuracy and sufficiency of the facts and opinions offered.”

Citing its regard for the Board's authority and the Board's commitment to discharging its statutory role in a manner consistent with legislative intent, the Court left to the Board, on remand, and “subject to law and judicial review, the task of crafting a suitable process appropriate to the nature of the matter before it.” The Court also acknowledged that no stay was imposed on the September 14, 1999 DAS reclassification Order, and, accordingly, further ruled that, if the Board reaches a materially different result on remand than was previously reached, the Board must fashion an appropriate Order remedying, as necessary, the impact of the approval in the interim.

By Order dated September 6, 2001, the Board initiated its review of VNJ's petition for reclassification of its DAS, on remand from the Superior Court of New Jersey, Appellate Division. In that Order, the Board determined to develop the record by deposition under oath of witnesses sponsoring testimony. By letter dated September 24, 2001, the Advocate moved for reconsideration of that Order, requesting that the Board require, in place of depositions, “cross-examination by way of evidentiary hearings.” The Advocate argued that cross-examination by deposition would not lessen the burden on the parties by virtue of the very nature of deposition. The Advocate noted that depositions are not managed by an impartial “referee,” as a Board hearing presided over by a commissioner would be, and in such a situation, abuses of the deposition process may occur, and objections raised during the deposition would still have to be addressed by the Board, or its presiding officer, when the deposition testimony is proffered for inclusion into the record. The Advocate reiterated its objections to the use of depositions by letter dated January 2, 2002.

On October 1, 2001, VNJ submitted an updated petition (“Petition on Remand”) pursuant to the Board's Remand Order. Accompanying the Petition on Remand was the Testimony of Michael S. Falkiewicz, reflecting the current state of the competitive marketplace throughout New Jersey. VNJ also updated and made current the financial material that had been provided in its Initial Petition.

The Advocate propounded and VNJ responded to discovery requests, and on November 8, 2001, the Ratepayer Advocate submitted proprietary and public versions of the Direct Testimony of Lee L. Selwyn.

VNJ propounded and the Advocate responded to discovery requests, and on December 13, 2001, VNJ submitted the proprietary and public versions of the Rebuttal Testimony of William E. Taylor and Michael S. Falkiewicz in support of the Petition on Remand. Corrected versions of this testimony were subsequently submitted on February 6, 2002. VNJ also responded to the Advocate's discovery requests with regard to these submissions.

On October 7, 2002, the Board ruled on the Advocate's Motion for Reconsideration and, noting that no parties had objected to the Motion, directed that evidentiary hearings be held in the matter. The Board also directed the parties to file updated testimony in the matter. Accordingly,

an updated petition was filed by VNJ on October 21, 2002. Updated direct testimony was filed by the Advocate on December 12, 2002 and on that same day; the Advocate filed a motion to compel certain discovery responses. VNJ filed an objection on December 23, 2002, to which the Advocate responded on December 27, 2002. On January 17, 2003, the Board issued an Order setting March 4, 2003 for a public hearing, and March 4 and March 12, 2003 for evidentiary hearings on the matter. On February 13, 2003, the Board granted the Advocate's motion. Rebuttal testimony was filed by VNJ on February 13, 2003. The public hearing was held as scheduled and an evidentiary hearing before Commissioner Butler was held on March 12, 2003. VNJ and the Advocate submitted initial and reply briefs on April 7 and April 21, 2003.

## **Positions of Parties<sup>1</sup>**

### Verizon New Jersey

VNJ asserted that the decision in the Board's Order of September 14, 1999 to reclassify DAS as competitive was based on intense competition for DA services from many competitors and alternative providers reflecting the continuing evolution of New Jersey's telecommunications marketplace, and that the record is clear that the degree of competition demonstrated more than 3 years ago has intensified further. VNJ therefore claimed that it has satisfied the Board's three-pronged test for reclassification showing a presence of competitors, availability of like or substitute services and the absence of barriers to entering the market.

As to the presence of competitors, VNJ contended that interexchange carriers, Alternative DA Providers or ADAP's and CLEC's all provide DA services to residential and business customers in New Jersey. It further contended that substitute services are readily available to VNJ customers throughout the State. Wireless DAS is available to millions of consumers. Internet-based directories are widely available and offer enhanced services as compared to VNJ's DAS. According to VNJ, its and paper directories remain the source of telephone listings relied on by most customers. Survey evidence demonstrated that the substitute services are preferred by customers over local DAS.

VNJ also argued that the Advocate's contention that no substitutes can be considered without completion of a formal "elasticity" study misstates applicable law and is contrary to common sense. The Advocate's approach according to VNJ is thus inconsistent with the evidence in the Board's earlier decision and with the decisions of numerous other state commissions.

VNJ argued that it established in its prefiled testimony that the Board's reliance on the three statutory criteria is correct as a matter of economics and policy. It claimed that the Advocate ignored the evidence in this case, and resorted to decisions in unrelated matters. VNJ contended that the Advocate has misinterpreted the statutory criteria governing reclassification, arguing the Board should consider only identical rather than substitute services, and has also ignored VNJ's evidence. VNJ further argued that the Advocate also has introduced confusing and flawed regulatory pricing arguments to divert the Board's attention from the relevant evidences; *i.e.*, evidence regarding the presence of competitors, availability of like or substitute services, and barriers to entry that the Board has previously determined support the reclassification of DAS.

VNJ contended that the Board chose three years ago in a less competitive market to keep rates for local DAS below cost for residential customers. This suggests that those rates may increase

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<sup>1</sup> The Board notes that although AT&T initially participated in this matter, following the remand by the Appellate Division, AT&T did not participate in the hearings nor submit a brief.

under competition, however, that increase would improve market efficiency and make it possible for competitors to compete more effectively for all segments of the DAS market.

#### Ratepayer Advocate

The Advocate argued that VNJ's reliance upon the 1999 Order in this proceeding is misplaced because that Order was issued without a full, complete and accurate record, and does not have probative value in this proceeding. The Advocate claimed that VNJ improperly attempted to divert attention away from the 1999 Order that lacked filed testimony, discovery, cross-examination and briefs. The Advocate argued that VNJ's case is weakened and places inordinate reliance on the 1999 Order without sufficient stand-alone data and failed to meet its burden of proof pursuant to N.J.S.A. 48:2-21(d). The Advocate contended that VNJ has not met its burden of proof with regard to the statutory criteria, and the alternatives proffered by VNJ are not sufficient substitutes. The Advocate further claimed that VNJ continues to trumpet print, computer and electronic media as competitive alternatives to DAS but that these alternatives do not meet the statutory standard of substitute services. A CD-ROM is no different than printed directories. Like a printed directory, the information cannot be manipulated and imparts its resources through the search efforts of the user. The Advocate contended that VNJ pointed to the growth of wireless penetration but failed to disclose a dispositive point that land-line callers cannot access wireless 411. It claimed that wireless DAS is not substitutable for wireline DAS because one cannot access the former from the latter and appears to be an improbable solution that requires high front end costs. According to the Advocate, wireless DAS cannot be considered a substitute for wireline DAS until wireless as a whole is considered a substitute for wireline service. The Advocate noted that VNJ professed that there are no barriers to entry and that the 411 code is not an essential input but it is not willing to relinquish control of that input. The Advocate noted the FCC's inquiry into 411 that lack of equal access to 411 is a barrier to entry in the DAS marketplace.

The Advocate further argued that VNJ's position that the Advocate is arguing for identical rather than substitute services is a misunderstanding of the Advocate's discussion on substitute services and methods for determining them. The Advocate continued, that based upon the Board's consideration of the three criteria, the basis of the Board's decision in the cited PAR-2 decision is unknown because the Board has not yet released that Order. The Advocate maintained that VNJ persists in its failure to offer quantitative evidence that there are substitutes for DAS. A vast majority of New Jersey subscribers can only access VNJ DAS by dialing 411, and prior Board decisions and federal inquiries reveal that the dialing code alone is a substantial barrier to entry. The Advocate further argued that VNJ's petition might be greatly assisted with supportive quantitative evidence, but without it, effective competition for DAS does not exist.

The Advocate also submitted that a reclassification of DAS as competitive would create a textbook example of a tying arrangement, which is an agreement by a party to sell one product to a buyer on the condition the buyer also purchases another product. Tying arrangements are disfavored because the seller is able to advance sales for other than its competitive merits. The seller must have appreciable economic power and the arrangement must affect substantial volumes of commerce.

The Advocate argued that VNJ's Residential Basic Exchange Service (RBES) is a monopoly service, and that reclassification of DAS would require VNJ RBES subscribers to purchase DAS from VNJ. According to the Advocate, were DAS to be made competitive, this would have the effect of VNJ forcing its regulated RBES customers to pay for the call allowance that is built into DA, a competitive service, as part of the service package, and this is a per se tying arrangement. The Advocate argued that the only way to avoid a tying arrangement is to either implement presubscription for 411 or maintain DAS as a regulated service.

The Advocate submitted that VNJ's RBES included 4 free DA calls in the \$8.19 basic rate at the time PAR-2 was approved. The Advocate further submitted that PAR-2 includes 4 free calls within the basic rate structure, and any elimination of that allowance would reduce the value of basic service and accordingly require a reduction in RBES rates.

### STIPULATION

After discussions conducted following the submission of the briefs, VNJ, the Advocate and the Board's Staff entered into a Stipulation and Agreement (Stipulation) setting forth terms and conditions that the parties recommended the Board adopt to fully resolve the matter on an amicable basis.

Key terms and conditions of the Stipulation are as follows:

- 1) VNJ's directory assistance services will be classified as competitive based on the competitive standards of N.J.S.A. 48:2-21.19(b), while the Board continues to monitor the service.
- 2) The transition period provided by the Board's 1999 Order with regard to local residential directory assistance will be continued through the completion of a Board review of DA described below.
- 3) The four free call allowance per month, per line, for residential customers will be retained through the completion of a Board review of DA described below.
- 4) The local DA rate for residential customers will be capped at \$.50 per call. VNJ will notify affected residential local directory assistance customers of price increases in accordance with N.J.A.C. 14:10-5.4 (a-c).
- 5) VNJ will continue the exemption from the imposition of directory assistance charges for persons with a physical or visual disability and a bill insert notice will indicate that this class of customers will continue to receive this exemption.
- 6) On or before January 2006, the Board will commence a review of directory assistance services to evaluate the continuation of the competitive status, the rate cap, the call allowance and any other related issues. The service shall remain competitive during the pendency of said review and shall continue as such unless it is reclassified as non-competitive. The rate cap and four call allowance will remain in effect until the earlier of either (1) the completion of the review and issuance of a Board Order that will thereafter govern any rate cap or call allowance, or (2) July 1, 2006, unless the Board prior thereto issues an Order requiring the continuation of the rate cap and allowance.
- 7) VNJ has the continuing obligation to maintain the level of service quality for DAS consistent with the level of service quality currently in effect, or otherwise required by law, regardless of whether the service is provisioned through the use of a live operator or automated technology. In order to measure the level of service quality as VNJ implements self-serve automated local DA service, in addition to the existing service quality standard for local DA Service, VNJ will submit a tracking report regarding the provision of self-serve directory assistance service calls.

- 8) The Board is not precluded from taking action the Board deems appropriate and within its lawful authority, if VNJ fails to satisfy the service quality requirements as defined by existing service quality requirements.

#### DISCUSSION & FINDINGS

The Board, having reviewed the record in this matter and the Stipulation of the active parties, FINDS that the Stipulation is a fair compromise, is reasonable, in the public interest, and in accordance with law. The Board HEREBY ADOPTS the Stipulation, a copy of which is attached hereto, as its own, as if fully set forth herein.

The Board further DIRECTS VNJ to provide a draft of the bill insert describing the availability of Directory Assistance Services without charge for persons with physical and visual disability to Board Staff for review prior to its distribution to customers.

DATED: 1/23/04

BOARD OF PUBLIC UTILITIES  
BY:

signed  
\_\_\_\_\_  
JEANNE M. FOX  
PRESIDENT

signed  
\_\_\_\_\_  
FREDERICK F. BUTLER  
COMMISSIONER

signed  
\_\_\_\_\_  
CAROL J. MURPHY  
COMMISSIONER

signed  
\_\_\_\_\_  
CONNIE O. HUGHES  
COMMISSIONER

signed  
\_\_\_\_\_  
JACK ALTER  
COMMISSIONER

ATTEST:

signed  
\_\_\_\_\_  
KRISTI IZZO  
SECRETARY

IN THE MATTER OF THE FILING OF BELL ATLANTIC-NEW JERSEY, INC.  
FOR THE RECLASSIFICATION OF EXISTING RATE REGULATED SERVICES –  
DIRECTORY ASSISTANCE SERVICES AS COMPETITIVE SERVICES

Service List  
Docket Nos. TT97120889

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